ORIGINAL

1   IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2   IN AND FOR THE COUNTY OF YAVAPAI

3

4   THE STATE OF ARIZONA,   )
)
5   Plaintiff,   )
)
6   vs.   )   No. P1300CR2008-1339
)
7   STEVEN CARROLL DEMOCKER,   )
)
8   Defendant.   )
    _____)

9

10

11 BEFORE: THE HONORABLE WARREN R. DARROW
                JUDGE PRO TEMPORE OF THE SUPERIOR COURT
12   DIVISION SIX
                YAVAPAI COUNTY, ARIZONA
13

14   PRESCOTT, ARIZONA
                THURSDAY, SEPTEMBER 16, 2010
15   9:21 A.M. - 12:01 P.M.

16

17   REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

18   JURY TRIAL

19   TESTIMONY OF PAUL LINDVAY AND ROGER HOOVER

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24 ROXANNE E. TARN, CR
    Certified Court Reporter
25 Certificate No. 50808

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APPEARANCES

On Behalf of the State:

      Mr. Joseph Butner and Mr. Jeffrey Paupore
      Yavapai County Attorney's Office

On Behalf of the Defendant:

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1   (Whereupon, the jury enters the courtroom.)

2   THE COURT: The record will show the presence

3 of the defendant, the attorneys and the jury. The witness,

4 Detective Lindvay, has returned to the stand. He has

5 previously been sworn.

6   Mr. Butner, you may continue.

7   MR. BUTNER: Thanks, Judge.

8   PAUL LINDVAY,

9 previously called as a witness, having been duly sworn,

10 testified further as follows:

11   DIRECT EXAMINATION RESUMED

12 BY MR. BUTNER:

13   Q.   When we took the evening recess, we were talking

14 about trickling of the power into the laptop. Do you

15 remember that?

16   A.   Yes.

17   Q.   Okay. And you were talking about your hypothesis.

18 Let's just back up for just a moment and talk about your

19 hypothesis, so we can get back on track with that. Okay?

20   A.   Okay.

21   Q.   Your very reliable hypothesis, as I understand it,

22 would you please tell us what that was again in terms of what

23 was going on with Evidence Item 411, the laptop computer?

24   A.   The hypothesis was that the laptop, when seized by

25 the Yavapai County Sheriff's Office was in sleep mode when

1   they obtained it. When the deputy got it, it looked like it

2   was powered off, he just put it into evidence.

3   The laptop as the battery dies,

4   basically, or its power is extended to a point where it can't

5   sustain that memory anymore, it boots itself back up. The

6   data is up there in the memory, gets written back to the hard

7   drive and it goes into what we call hibernation mode, which

8   is where the memory gets written to the hard drive, so that

9   the battery can power off completely, but you still retain

10 that information that was up in memory.

11   Q.   You keep using the phrase "the memory gets written

12 to the hard drive." What does that mean, the memory gets

13 written to the hard drive?

14   A.   There are two types of storage in a computer. You

15 have what is called RAM memory, or Random Access Memory.

16 This is the volatile area. You have to have some power to it

17 for it to be able to store information. The RAM allows

18 applications to bring information into and out of it much

19 quicker than having to resort to the hard drive.

20   The hard drive is the physical disk that

21 is in your computer. If you have a computer, you know about

22 it. It can be anywhere in size from, like, 40 gigs all the

23 way to 2 terabytes. Those are the storage for your files.

24 Those are your word documents and your operating system and

25 everything else.

The memory takes portions from the hard drive, sticks it up there so it can be accessed faster, and when it is done with it, it just clears it out of memory. Your running applications are up in the RAM memory.

Q. Okay. RAM memory, that is separate from the hard drive; right?

A. Yes.

Q. And that is -- you said RAM is short for Random Access Memory?

A. Correct.

Q. And the hard drive, that is also memory, though; is that correct?

A. Yes.

Q. And the hard drive memory, that is what is in your computer all the time; right?

A. Can you say that one more time?

Q. The hard drive memory, that is what is in your computer all the time, so to speak? That is where the operating systems are and things like that?

A. Yes.

Q. So the hard drive is what helps you get access to the RAM?

A. The RAM is there to help access the data that's on the hard drive.

Q. Oh, okay. And so, what has this got to do with

the computer being in sleep mode and this trickle effect?

    A.   Microsoft has come up with a way to allow you to start your computer up faster. If you have your computer on, if you want to shut it down but be able to get back into the operating system quickly, you can use what's called either sleep mode or hibernate mode to do that. Instead of the stuff having to shut all the way down to where it is completely powered off, it takes your current running application -- let's say you have Microsoft Word running, a document up on the screen.

    If you go into sleep mode, it basically keeps that information alive while the processor powers down to conserve the battery for as long as it possibly can. Again, that uses a small amount of battery power and eventually that battery is going to die.

    Q.   Let me interrupt you now. We are back to the point where the person who was using the computer leaves the computer and it goes into sleep mode, or the person that was using the computer actually put it into sleep mode on their own; right?

    A.   Yes.

    Q.   The computer could automatically do that on its own; right?

    A.   It could. And the power setting for this computer was if it was running on battery power, after 20 minutes it

1   would put itself automatically into sleep mode.

2   Q.   When it goes into sleep mode like that, and your

3   hypothesis was that at the time it was seized by the

4   sheriff's office it was in sleep mode; right?

5   A.   Yes.

6   Q.   Then if nothing happens, if it is just left the

7   way it is, certain events then begin to take place with the

8   computer; right?

9   A.   Correct.

10   Q.   That is why you had Detective Smith record the

11   computer for a substantial period of time to see what was

12   going on with it?

13   A.   Correct.

14   Q.   Tell us, then, what the recording of the computer

15   revealed to you.

16   A.   Okay. We did -- we did two different recordings.

17   The first recording was just what

18   happened when the battery dies on the computer. Basically, I

19   took the cloned hard drive, and I had the power attached to

20   it, detached the power from the computer and let it run off

21   of battery power. When the battery got down to four-percent

22   power, I put it into sleep mode.

23   At that point we started the recording.

24   And it recorded just basically a blank screen up until a

25   point, and I don't recall exactly how long it was afterwards,

1   it was a few hours later, the computer automatically turned

2   itself back on. You heard some sounds. You saw the

3   little --

4   Q.   Go slowly. It turned itself back on, and then

5   what happened?

6   A.   You heard a sound, and there is little display

7   icons that are just below the screen. The little panel I was

8   telling you about that has the little moon icon, those lights

9   started flashing. There were two high-low wails that came

10   out of the computer.

11   Q.   Like an alarm or something?

12   A.   Yes, you could consider it that.

13   Q.   Lights. So, it turned itself on. You heard some

14   sort of a sound. What sort of sound was that?

15   A.   It was a sound that would come from the Windows

16   Operating System. I don't know how to better describe it

17   than that. It was almost like a chime.

18   Q.   And then lights started flashing?

19   A.   Yes.

20   Q.   And then you heard high-low wails?

21   A.   Yes.

22   Q.   From the computer?

23   A.   Yes.

24   Q.   Like an alarm?

25   A.   Correct.

1   Q.   And then what happened?

2   A.   The screen came on, and you saw a display on the

3   screen that said it was going into hibernation mode.

4   Q.   And then what happened?

5   A.   The slider bar that was underneath the little

6   wording that said it was going into hibernation mode slid all

7   the way across the screen, and the computer powered off

8   completely.

9   Q.   It died at that point?

10   A.   Essentially. I can't say for sure whether the

11   computer powered itself off, or whether the battery died at

12   that point in time.

13   Q.   But all the power was gone?

14   A.   Yes.

15   Q.   Now, after seeing this phenomena take place, did

16   you check the computer out to see what affect all of this had

17   on the files in the computer?

18   A.   I did.

19   Q.   And what affect did it have on the files in the

20   computer?

21   A.   I took the cloned hard drive out, the one we did

22   the test on, and hooked it up and used our forensic software,

23   which is called EnCase, to view the file system on there.

24   That software shows us all the dates, all the files that are

25   on the hard drive, along with the various dates and times

1   that are associated with those files.

2   What I did was I compared the files that

3   had changed after the point in time where I had put it in

4   sleep mode to the files that had changed on the original Item

5   411 after it had been put into Yavapai County Sheriff's

6   Office custody.

7   Q.   You tend to go really fast with this stuff. I am

8   sure it is because you know much more about it than I do,

9   obviously.

10   You said you used the EnCase file. Tell

11   us what the EnCase file is, please.

12   A.   The EnCase program is the --

13   Q.   The EnCase program, sorry.

14   A.   It is a program which we use which is forensic

15   software, and it is designed to allow us, as forensic

16   examiners, to examine the file system on a hard drive and

17   determine various things about it, be able to look at the

18   files on it, look at the file system, see the dates and times

19   that are associated with the files on that hard drive.

20   Q.   Now, you started off with the problem or the

21   question of why had certain files changed on the original

22   computer; right?

23   A.   Correct.

24   Q.   And tell us how you had noticed that those files

25   had changed on the original computer hard drive?

A.   Okay. When I first got the computer, the hard

drive which I cloned, the original hard drive, I made what is

called an image file of it. When you make a cloned image,

when I cloned the original hard drive to another drive, that

is called a "clone image." I made a clone image file, which

is taking a byte for byte copy of the data that's on the

original hard drive, and I put it into a file rather than

into another drive.

The reason I do that is so that I can

bring it into our EnCase software. Our EnCase software will

look at an image file. It is no different than running it

off of a separate drive, except it is a file rather than

another drive.

So, I brought that image file into

EnCase, and I examined it and looked at the file system, and

basically, what it showed me was the exact file system that

is on the original hard drive of Item 411. And I compared

the dates and times for the files that had changed.

Q.   How had they changed?

A.   There was time stamps that are associated with

files. There is a created time stamp, there is a modified

time stamp, and there is an accessed time stamp.

Q.   Created, modified and accessed?

A.   Correct.

What I did was I looked to see which

1   files had either a created time stamp, a modified time stamp

2   or an accessed time stamp that showed after the date and time

3   that the laptop was in Yavapai County Sheriff's Office

4   custody.

5   Q.   Were there files that had a created time stamp

6   after the time that the computer was seized?

7   A.   Yes, there were.

8   Q.   The computer was seized on July 2nd of 2008;

9   right?

10   A.   Yes.

11   Q.   Actually, July 3rd.

12   A.   Yeah. It was July 3rd.

13   Q.   July 3rd of 2008. So what files had a created

14   date after July 3rd of 2008?

15   A.   Do you want the specific names of the files? I

16   believe there were ten of them which had changed.

17   Q.   Did they fall into a category?

18   A.   They would be what I would categorize as system

19   and application files. Do you want me to explain that?

20   Q.   Would you please explain.

21   A.   I break things down to two different categories.

22   There is system application files, and then there is user

23   files.

24   User files would be like your Excel

25   spread sheets or your Microsoft Word documents, your

1 Microsoft Money files. Anything that would contain your user

2 data or things that you would enter into it.

3   Then there is system application files.

4 Those are files that the operating system uses to run, or

5 that applications use to actually make the application itself

6 run, not your data, but just data that is needed to make the

7 applications run. So as to be able to run Microsoft Word in

8 certain files, that be would be an application file, in my

9 opinion.

10   Q.   So what had changed in terms of the time created

11 in the system and application files?

12   A.   You are asking for the exact names of the files?

13   Q.   No. I am asking how had the date changed in

14 regard to those? My understanding of your testimony is that

15 the date had somehow changed on those files.

16   A.   Correct. They had changed to a time stamp of July

17 8, 2008, at approximately 3:47 in the morning.

18   Q.   July 8 of 2008, 3:47 a.m.

19   A.   Yes.

20   Q.   And is that a created time or modified time or

21 accessed time?

22   A.   That is a created time.

23   Q.   And in addition to those files changing in that

24 way, were there other files that were changed?

25   A.   Well, there is two other time stamps, a modified

1   time stamp and accessed time stamp.

2   Q.   Were those times changed also in regard to those

3   files?

4   A.   Yes.

5   Q.   To what date?

6   A.   There were 58 files which had a modified time

7   stamp which changed, and they had also changed to

8   approximately 3:47 in the morning on that same date.

9   Q.   You said you were talking about ten files in the

10   system and application category?

11   A.   Correct.

12   Q.   Now you are talking about 58 files changing. What

13   category were they in?

14   A.   They are also in the system application category.

15   Q.   And they also changed their times?

16   A.   Yes.

17   Q.   To the same time, 7/8/08 at 3:47?

18   A.   Yes.

19   Q.   Any other files change?

20   A.   Then we go down to the accessed time stamp, and

21   there were 340 files also within that system application

22   category that changed to July 8, 2008, at 3:47 a.m.

23   Q.   And do these ten files that changed time created

24   and the 58 that changed in terms of time modified, and then

25   the 340 that changed in terms of time accessed, do these

1   files overlap? In other words, are the 10 part of the 58,

2   and the 58 part of the 340?

3   A.   I would have to reference back to the spread sheet

4   that has them all on there, but I believe so.

5   Q.   Do you have the spread sheet with you?

6   A.   I do.

7   Q.   Would you take a look at that to refresh your

8   recollection.

9   A.   (Whereupon, the witness reviews a document.)

10   Yeah. Some of those files did overlap on

11   all three of the time stamps.

12   Q.   Were there any other categories of files that

13   changed in terms of their times?

14   A.   No. All the files that changed were what I would

15   consider to be system application based files.

16   Q.   And so, would it be fair to state that the system

17   and application type files are the kinds of files that allow

18   you to operate the computer with the various programs that

19   you use?

20   A.   Yes.

21   Q.   And then they allow you to access the memory in

22   the computer?

23   A.   Yes, you could say that.

24   Q.   The information that you are choosing to store

25   there?

1   A.   Yes. Well, the application -- the memory and the

2   application kind of work hand-in-hand. When an application

3   needs more storage space and it wants to access it quickly,

4   it will stick it up in that RAM memory I was telling you

5   about.

6   Q.   So, all of these files basically, 340 that had

7   accessed time changed and then 58 that had the modified time

8   changed and then 10 that had the created time changed, all of

9   those files that changed their times, the time that they

10   changed at was July 8, '08, at 3:47 in the morning?

11   A.   Yes.

12   Q.   When you got that information, did that cause you

13   to take any further steps or reach any conclusions?

14   A.   At that point we had to see if we could replicate

15   it. Microsoft Windows is what we call a "closed source

16   operating system." In other words, I can't see the

17   programming code that was used to make things happen on the

18   computer.

19   With that being the case, the only way to

20   really figure out what is happening on it is to test and try

21   to replicate what you are seeing. If I could look at the

22   source code, I could say exactly what is happening.

23   Unfortunately, that is not the case with Microsoft Windows.

24   Q.   Do they keep it protected or something so people

25   can't use it without their permission?

A.   Correct. You could consider it proprietary

information.

Q.   So they own it and they try to keep it their own?

A.   Yes.

Q.   Without that information, then, you had to try and

reproduce the phenomena then?

A.   Correct.

Q.   What did you do to reproduce the phenomena?

A.   I took the cloned hard drive that I was looking at

the power settings from. After I finished looking at the

power settings for the computer, I disconnected the power

from it and let the computer run off of the battery, until it

got down to a point, which I think I said was four-percent

before, then I put it in sleep mode. This is going back to

that video that you asked about, the first video. Actually,

I take that back. The video was for the second test. The

first test there was no video.

I let it get down to four-percent,

disconnected the power, and I let the computer do whatever it

was going to do when the battery died.

The computer sat there. It did its

thing. Actually, I missed when it turned itself back on.

When I was at my desk, I saw there was a little green moon

icon on it. I started doing other things, looked at the

computer a while later, and noticed the moon was off, showing

that the computer had lost power.

Q.   So you missed the --

A.   I missed the actual event, yes.

Q.   -- missed the event; right?

After missing the event, did you do another test where you recorded the whole thing?

A.   Absolutely.

Q.   And when you did this last -- this is the last time you recorded the whole thing; right?

A.   No. There were two recordings. The first one was just recording that last piece. The problem was the first test that I did, I had no way of knowing when the computer was going to turn itself back on. It could have been two minutes, it could have been ten hours. There was no way to know. We wanted to find out what was happening when the battery died, so we started videotaping, and I believe it took something like eight or ten hours before the computer died.

Q.   And that videotape was done with you letting the power go down to four-percent and then putting it in sleep mode?

A.   Yes.

Q.   And did you do a subsequent recording?

A.   I did.

Q.   What were the conditions of the subsequent

recording? So this is the third time you have done this; right?

    A.   Yes.

    Q.   What were the conditions of the third time?

    A.   The third one was I let the laptop charge. I hooked the AC power plug up to the laptop, and I let the battery inside the laptop charge up to a hundred percent. I let it charge for probably a day-and-a-half. I made sure it was fully charged, at which time we started the video.

            We turned the laptop on, and from there we put it into -- with the battery a hundred percent, we put it into sleep mode, and we let the film run for approximately, I think it was seven days, and it was on day five that it actually died. So we just let that battery slowly discharge while in sleep mode over that entire five-day period before it turned back on.

            Let me look and see exactly how many days it was.

    Q.   That would be good.

    A.   (Whereupon, the witness reviews a document.)

            We started the test on February 2nd, 2010, and it appears that it woke itself back up on February 7, 2010. So it was five days before it woke back up.

    Q.   And when you say "woke back up," the power went down, it went into that sleep hibernation mode?

A.   We put it into sleep mode at a hundred percent,

and we just let the battery slowly trickle down.

Q.   You left it in sleep mode with the fully charged

battery and then let it trickle down, and then it woke back

up on February 7th?

A.   Correct.

Q.   What did it do on that day?

A.   At that time, I heard the chime again, or the

Windows sound. The lights, the little LED lights I was

telling you about flashed as before. The high-low wails, two

high-low wails came on the computer. On the screen was the

little text window or the graphical window that showed it was

going into hibernation mode, the little scroll bar underneath

that wording went all the way across the screen, and the

laptop powered off just as before.

Q.   And then after all of that occurred, had you gone

back and checked to see what files had changed in any way?

A.   I did.

Q.   And what files had changed?

A.   They were system and application based files, no

user documents.

Q.   And tell us the difference between system and

application files and user documents.

A.   Okay. As stated before, user documents are your

Word documents, your Excel spread sheets, your Money files,

1 any file that would contain your user data. System

2 application files are files which are required to make the

3 application run and make the operating system run.

4   Q.   The user documents are the reason that you get a

5 computer. You get your computer to create spread sheets and

6 do research with and things of that nature; right?

7   A.   Yes.

8   Q.   And then the system and application files, they

9 are the files that make the computer run?

10   A.   Correct.

11   Q.   And the user documents, they didn't get anything

12 changed during this process?

13   A.   Correct.

14   Q.   So their times were prior to the date of seizure

15 of July 3rd of 2008?

16   A.   Yes.

17   Q.   In all respects; time created, time modified, time

18 accessed?

19   A.   Yes.

20   Q.   But the system and application files are the ones

21 that had changes in their times?

22   A.   Yes.

23   Q.   And did you preserve that recording that took

24 several days?

25   A.   Detective Smith is the one who made the

1   recordings, and he preserved that video.

2   Q.   Now, let me show you what's been marked as Exhibit

3   641. I ask to you take a look at this document, please.

4   A.   (Whereupon, the witness reviews a document.)

5   Q.   Do you recognize what Exhibit 641 is?

6   A.   I do. It's the report which I wrote after I

7   examined Item 411, the original hard drive, and after doing

8   the first two tests.

9   Q.   You didn't write a report after that last test

10   where it ran for five or more days?

11   A.   Correct. I did not do an actual report for that.

12   Q.   That was just a complete recording and

13   documentation of that event?

14   A.   Yes.

15   Q.   And is this report, Exhibit 641, does that

16   accurately document and summarize your investigation and

17   conclusions in connection with this particular aspect of your

18   investigation?

19   A.   It does.

20   MR. BUTNER: I'd move for the admission of 641

21   at this time.

22   MS. CHAPMAN: No objection.

23   THE COURT: 641 is admitted.

24   BY MR. BUTNER:

25   Q.   Now, in connection with this case, did you perform

1   any other investigation of evidentiary items in this case?

2   A.   I did.

3   Q.   What did you do?

4   A.   There was a memory card from a camera, which was

5   brought down to me by Detective Sechez, and he wanted it

6   analyzed to see if there were some images on there that he

7   was looking for.

8   Q.   And so he transported this memory card down to you

9   from the camera; is that right?

10   A.   Yes.

11   Q.   What kind of a memory card was it?

12   A.   It was a Sandisk Memory Stick Pro, dual memory

13   card, two gigabyte.

14   Q.   Tell me how a Sandisk Memory Stick Pro, how that

15   works?

16   A.   You have a camera, a digital camera. It needs to

17   be able to store the pictures that it takes onto something.

18   So, you would take, for instance this card, the Memory Stick

19   Pro, and insert it into the camera, and when you take

20   pictures with the camera, it actually saves the pictures

21   themselves to that memory stick so can you access them later.

22   Q.   Did you need any special equipment in order to

23   work this Sandisk? What can I call that? A memory card?

24   A.   You can call it a memory card.

25   Q.   Did you need any special equipment to operate this

1   memory card?

2   A.   I did.

3   Q.   What did you need?

4   A.   Along with the memory stick that Detective Sechez

5   brought down, he also brought down an adapter, and that was

6   referenced to me as Item 318-018, and what is the Sandisk

7   Memory Stick duo adapter.

8   Q.   You got the adapter that goes with the memory

9   stick?

10   A.   Yes

11   Q.   And the memory stick, how was that evidenced to

12   you as an evidence item?

13   A.   318-024.

14   Q.   Were you tasked with anything specifically to do

15   with this memory card?

16   A.   I was asked to forensically bring the data from

17   the memory stick into our EnCase program so that Detective

18   Sechez could look through the images on it and see if the

19   images he was specifically looking for were there.

20   Q.   And were you looking for deleted images of some

21   kind?

22   A.   We were looking for images that were not only on

23   the memory stick itself so that anybody could see them, but

24   also, yes, images that were in a deleted state.

25   Q.   Were you asked to restore the deleted images?

A.   I was asked to recover the deleted images.

Q.   Recover the deleted images. That is different than restore them?

A.   Restore would indicate that I saved it out to a hard drive somewhere. The EnCase application doesn't require you to save them out to a hard disk to look at them. It can recover them within the application itself, and look at them within the application itself.

Q.   And tell us how you recovered these images?

A.   There was a -- what is called an EnScript. What that is is a little application within the EnCase program which goes out to the hard drive, looks at the memory stick, looks at the data on the memory stick, and tries to find what we call a file header that describes the type of file that we are looking for. And at that point it will try and recover the image.

I am trying to think of a better way to describe this to you. You have a picture file. To me and you it just looks like an image. When it is stored digitally, there is data inside of it. And there is a specific type of digital signature that a picture file has that is common to any picture. If I take a picture of a desk and a picture of, I don't know, a car. They look different, but at the very beginning of the file there is going to be a common header, which is the same between them as long as it

the same type of files. Common picture files are jpegs or

gifs. Jpegs will have a common header to it. A gif file has

a common header to it that describes that jpeg file or that

gif file, not necessarily the picture that it shows but what

type of file it is.

Q.   You say a jpeg file. I've heard of those. Those

are picture files; right?

A.   Yes.

Q.   What was the other file you had?

A.   A gif file or G-I-F file.

Q.   What is that?

A.   It is also a type of image file or picture file.

Q.   In this particular case, what kind of files were

you looking for, jpegs or gifs?

A.   Jpegs.

Q.   You use the EnCase program to find these files

that had been deleted?

A.   Yes.

Q.   Were you successful in doing that?

A.   I was.

Q.   Were you able to then, using the EnCase file,

recover pictures from that memory stick?

A.   I was.

Q.   Before we get to the pictures, let me show you

what has been marked as Exhibit 3275.

1   Do you recognize that particular

2 document, 3275, for the record?

3   A.   I do.

4   Q.   And what is that?

5   A.   It is a departmental report that I wrote for the

6 examination of the memory stick that was brought to me by

7 Detective Sechez.

8   Q.   Does that report accurately set forth your efforts

9 in operating the EnCase file to recover the images from the

10 memory stick and summarize them?

11   A.   Yes.

12   MR. BUTNER: I would move for the admission of

13 Exhibit 3275 at this time.

14   MS. CHAPMAN: No objection.

15   THE COURT: 3275 is admitted.

16   MR. BUTNER: Now, I am going to show you three

17 photographs for foundational purposes only at this point.

18 That would be Exhibits 3272, 3273, and 3274.

19   Q.   Ask if you would take a look at those, please.

20   A.   (Whereupon, the witness reviews a document.)

21   Q.   Do you recognize those photographs?

22   A.   I do.

23   Q.   How is it that you recognize Exhibits 3272, 73,

24 74?

25   A.   They were the images that Detective Sechez picked

out as the images that he was looking for while I was

examining that memory card.

Q.   Are those the three images that you recovered with

the EnCase file?

A.   Yes.

MR. BUTNER: I would move for the admission at

this time for foundation purposes only of Exhibits 3272,

3273, and 3274.

MS. CHAPMAN: A couple of questions on voir

dire, Your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MS. CHAPMAN:

Q.   Do you know who is depicted in these photographs?

A.   The name was told to me by Detective Sechez,

however, I have no way to verify who it actually is.

Q.   You know it is not Mr. DeMocker; is that correct?

A.   Correct.

MS. CHAPMAN: Okay. Thank you.

No objection.

THE COURT: Okay 3272, 73 and 74 are admitted

as far as foundation evidence being presented.

DIRECT EXAMINATION RESUMED

BY MR. BUTNER:

Q.   Now, in regard to this case, did you have any

1   additional duties in terms of an investigative nature?

2   A.   Investigative nature?

3   Q.   Correct.

4   A.   No, I don't believe so.

5   Q.   You didn't perform any additional investigations

6   in connection with this case; is that correct?

7   A.   No additional investigations, correct.

8   Q.   Did you perform any duties in regard to assisting

9   Detective Steve Page of the Yavapai County Sheriff's Office?

10   A.   I did.

11   Q.   And first of all, would you tell us when Detective

12   Page began working in ACTIC?

13   A.   I don't have the date.

14   Q.   Approximately?

15   A.   I would approximate around the beginning of 2009.

16   Q.   And what were your additional duties in regard to

17   assisting Detective Page?

18   A.   I was asked to mentor Detective Page, help guide

19   him as he did his examination. If he had questions, I was

20   supposed to answer him and help educate him.

21   Q.   And did you help train him in the usage of the

22   various forensic computer programs such as the EnCase program

23   and the Forensic Toolkit program, and then there was some

24   other type of program that had to do with Internet

25   investigations?

A.   Yes. It was called Net Analysis.

Q.   And the Net Analysis program. Did you help mentor him and train him in regard to usage of those programs?

A.   I did. I wouldn't say in a formal way. It was informal. And it was based off of questions that he had on how to operate it. I didn't sit down with him and go step-by-step through each application and specifically explain everything that's inside of them.

Q.   You were available for him to come and ask questions of?

A.   Yes.

Q.   Did you review some of Detective Page's investigative efforts?

A.   I did.

        MR. BUTNER: I don't have any further questions of this witness at this time.

        THE COURT: Thank you, Mr. Butner.

            Ms. Chapman.

            CROSS-EXAMINATION

BY MS. CHAPMAN:

Q.   Good morning, Detective Lindvay.

A.   Good morning.

Q.   You and I have met before; is that correct?

A.   Yes.

Q.   We met in May at your offices with Mr. Butner; is

1   that right?

2   A.   Yes.

3   Q.   I want to go over to make sure that I understand

4   your testimony about the work that you did with respect to

5   Item 411.

6   You are familiar with forensic standards

7   for seizing a laptop; is that correct?

8   A.   Yes.

9   Q.   And part of the protocol or best practice is to

10   remove a battery source or a power source from a laptop when

11   it is seized; is that right?

12   A.   Yes, it is.

13   Q.   That is because if you don't do that, you can

14   alter files on a computer; is that right?

15   A.   Correct.

16   Q.   And I think yesterday you said, typically, that is

17   a bad thing?

18   A.   Yes.

19   Q.   And DPS, you know, seized the computer -- Yavapai

20   County seized the computer in this case. You are aware of

21   that?

22   A.   Yes.

23   Q.   And when you all received the laptop from Yavapai

24   County, you discovered that time stamps were on the computer

25   that were after the seizure; is that right?

1   A.   Yes.

2   Q.   And I think you told Mr. Butner that you were

3 aware that the computer was seized on July 3rd?

4   A.   Yes.

5   Q.   And the time stamp that you discovered on some of

6 the files was for July 8th?

7   A.   Yes, that's correct.

8   Q.   So your job was to examine why the time stamps

9 were on some of the files after the laptop was seized; is

10 that right?

11   A.   Correct.

12   Q.   You concluded -- just to make sure that I

13 understand -- that the computer, the laptop, was in standby

14 mode when it was seized?

15   A.   Yes.

16   Q.   And eventually the battery died?

17   A.   Correct.

18   Q.   Before the battery died, the computer went into

19 hibernation mode?

20   A.   Correct.

21   Q.   The process of the computer going into hibernation

22 mode is when some of those time stamps changed; is that

23 right?

24   A.   Yes.

25   Q.   I think you testified this morning that there were

1   create time stamps, file create time stamps of July 8th?

2   A.   Yes.

3   Q.   And there were modified time stamps of July 8th?

4   A.   Yes.

5   Q.   Was the other category called access time stamps?

6   A.   Yes.

7   Q.   All of those changes were for a time stamp of

8   July 8; is that right?

9   A.   That is correct.

10   Q.   And I think that your conclusion was all of those

11   time stamps were changed between the time that the computer

12   was going out of standby mode and into hibernation mode and

13   then the battery was shutting down; is that right?

14   A.   That's correct.

15   Q.   And I think what you said is that all of those

16   files were system and application files?

17   A.   Yes.

18   Q.   And you distinguished those from user files?

19   A.   That's correct.

20   Q.   So no user files were altered; is that right?

21   A.   Correct.

22   Q.   And I think what that means is that no files that

23   were created by the person who was using the computer were

24   changed in any way?

25   A.   Correct.

1   Q.   And you couldn't determine that until after you

2   did your work to test what would happen; is that right?

3   A.   With the respect of coming up with a reasonable

4   theory as to why it happened, that would be correct.

5   However, I could examine the original Item 411 to see what

6   files had time stamps that had been changed. So I was able

7   to determine that there were what I considered to be system

8   and application files that had those time stamps changed and

9   no user files. That I could do without the test.

10   Q.   Before you did the test, you could determine that

11   no user files were destroyed or were altered by the process

12   of the computer leaving standby mode and going into

13   hibernation mode?

14   A.   Correct.

15   Q.   But you couldn't determine why the computer had

16   created time stamps of July the 8th?

17   A.   Correct. Without any testing, there was no way to

18   prove it. I could have theories, but that is merely what it

19   would have been at that point.

20   Q.   So you did your test to prove that your theory

21   about how the process of the time stamps being created

22   occurred; is that right?

23   A.   Yes.

24   Q.   You did three tests to determine how it occurred?

25   A.   That is correct.

Q.   And you had two of those tests videotaped?

A.   Yes.

Q.   One of the tests that was videotaped took several hours?

A.   Let me look in reference to that back on my spread sheet here.

The first videotaped test took approximately six hours from the time it went to sleep to the time it woke back up.

Q.   And the second test, as I recall, took several days?

A.   Yes.

Q.   And all of that videotaping was done by Detective Smith?

A.   Yes.

Q.   You didn't do any videotaping on your own?

A.   I did not.

Q.   And he ran a video to capture the process of the battery depleting and going into hibernation?

A.   Yes.

Q.   So all of this work that you did and that Detective Smith did to determine what happened with these files was as a result of the Yavapai County Sheriff's Office failure to remove the battery from the laptop when it was seized; is that right?

A.   That would be correct.

Q.   If proper protocol had been followed, the battery would have been removed from the laptop when it was seized; is that right?

A.   That's correct.

Q.   And there wouldn't have been time stamps from after the seizure; is that right?

A.   That would be correct.

Q.   I want to talk a little bit about the second report that you did, which was Exhibit 3275.

Do you have that in front of you?

A.   I do.

Q.   Did you have an understanding of whose memory card it was that you were examining?

A.   The name was told to me by Detective Sechez.   If you asked me to tell you what that name was right now, I honestly could not recall what the name was.

Q.   Do you recall if it was Mr. Knapp?   Jim Knapp?

A.   That sounds correct, yes.

Q.   You recovered several photos; is that correct?

A.   I recovered three photos that he was looking for.

Q.   And those photos were from what I think you described in your report as unallocated space?

A.   Yes.

Q.   And I think that you testified that that means

that those three photos had been deleted from the camera?

        A.   Yes.

        Q.   Could you tell from your examination when the

deletion had taken place?

        A.   Let me refer back to my report for a minute.

        Q.   Just for the record, you are looking at Exhibit

3275?

        A.   Correct.

                MR. BUTNER: Actually, he is looking at his

own copy, because I am looking at 3275.

                MS. CHAPMAN: Okay.

                MR. BUTNER: Here, do you need the other

report, too, Counsel?

                MS. CHAPMAN: I don't at this time. Thank

you.

        Q.   I am going to hand the witness 3275.

        A.   The answer to your question is no, you cannot

determine when they were deleted.

        Q.   Okay. And can you determine when the photographs

were taken?

        A.   To a certain extent. There are some time stamps

that are embedded into what we call the exif data of the

photos. That is basically data that is inserted into the

image file itself by the camera when the picture was taken;

what type of camera took the picture, when the picture was

1   taken, various settings that were on the camera at the time

2   the picture was taken. The time stamp that is in there is

3   only as good as the time setting that is on the camera. I

4   can tell the time that was within the files, which typically

5   show what time the picture was taken, but I can't say with a

6   hundred percent certainty what time they were taken.

7   Q.   Does the time setting on the camera relate to the

8   user putting the correct time and date on the camera?

9   A.   Yes.

10   Q.   Can you tell me, with that understanding and that

11   limitation, what time stamp was on the camera for these

12   photos?

13   A.   Yes, I can.

14   All three were taken on December 25th,

15   2008, at approximately 10:01 p.m. at night.

16   Q.   So they were taken, all three of these photos,

17   around the same time on the same date of December 25th?

18   A.   Yes.

19   Q.   You can't tell, based on your examination, when

20   they were deleted?

21   A.   I cannot.

22   Q.   But you know they were deleted?

23   A.   Yes.

24   Q.   I have one other area I wanted to talk to you

25   about, and that was your work with Detective Page.

1   You did not review every one of Detective

2 Page's reports; is that right?

3   A.   Correct, not every one.

4   Q.   Your review that you did of Detective Page's work

5 was on a spot check basis; is that right?

6   A.   That's correct.

7   Q.   So when you did review one of the reports, you

8 didn't go through it line by line?

9   A.   I read through the entire report. I checked

10 various things that he had processed to make sure that the

11 data that he had put in or explanations he put in were

12 technically correct.

13   Q.   Did you do that with every piece of information he

14 included in his reports that you reviewed?

15   A.   Not every piece.

16   Q.   How did you determine which pieces you would check

17 and which you would not?

18   A.   It was on a spot basis. If he had found a hundred

19 items of something, I checked five out of that hundred to

20 make sure what he was reporting was correct.

21   Q.   I think you said that Detective Page started his

22 work, you're not exactly sure, but sometime in the beginning

23 of 2009?

24   A.   To the best of my recollection. I honestly don't

25 have the date.

Q. We won't hold you to it. You didn't begin reviewing his work until January of 2010; is that right?

A. Sounds about right.

Q. You didn't review any of the work he did the first year he was working; is that right?

A. That's correct.

MS. CHAPMAN: Thank you. I have no further questions.

THE COURT: Thank you, Miss Chapman.

Mr. Butner, do you have any redirect?

MR. BUTNER: I do not, Judge.

THE COURT: Ladies and gentlemen of the jury, do you have any questions for Detective Lindvay?

We have a few questions. Please remain at the witness stand, so I can look at the questions. I may need to take a recess. We will see when I look at the questions.

Any other questions?

THE BAILIFF: No.

THE COURT: We will see counsel at side bar. If we need to make a record, we will do that.

Ladies and gentlemen, we want to make sure our voices aren't too loud. Please let Phil know if that occurs.

(Whereupon, a discussion was held off the record.)

1   THE COURT: Thank you.   I have a number of

2   questions.

3   THE WITNESS: Sure.

4   QUESTIONS BY THE JURY

5   THE COURT: And Detective Lindvay, the

6   attorneys may choose to follow-up with these questions.

7   When was the camera seized and when did

8   you complete your examination?

9   THE WITNESS: The first part when the camera

10   was seized, I don't have that information.   That would be a

11   question for Detective Sechez.

12   As for when my examination was completed,

13   I am going to refer back to my report.   Detective Sechez

14   brought me the items on June 16, 2010, and the examination

15   was completed the same day.

16   THE COURT: Follow-up, Mr. Butner?

17   MR. BUTNER: No follow-up on that.   Thank you,

18   Judge.

19   THE COURT: Ms. Chapman?

20   MS. CHAPMAN: No follow-up.

21   THE COURT: And I have the questions up here

22   if the attorneys need to see those.

23   Do you know if the laptop was plugged

24   into the power cord and wall outlet when the computer was

25   taken?

                    THE WITNESS: I don't have that information.

There is no way for me to know that information.

                    THE COURT: Mr. Butner?

                    MR. BUTNER: No follow-up on that particular

question, Judge.

                    THE COURT: Ms. Chapman.

                    MS. CHAPMAN: No follow-up. Thank you.

                    THE COURT: Okay.

                         Was the calendar and time settings set to

local Arizona time and current date or some other settings?

                    THE WITNESS: I can't answer that.

                         When we do an examination of a computer,

one of the things we check is what we call the -- we call the

bios time or the system time. When you boot up your computer

before you actually get to the Windows Operating System,

there is what we call the bios. Stands for basic input

output system. That allows us to put various settings into

the computer. One of the things is what we call the system

clock. We can set it to a time and date. I checked it

against the actual time here in Arizona. And I noticed Item

411, or the laptop, was set -- it was ten minutes faster than

what the actual time was here in Arizona.

                    THE COURT: Follow-up, Mr. Butner?

                    MR. BUTNER: Thank you.

FOLLOW-UP QUESTIONS

BY MR. BUTNER:

Q.   Just to clarify, it was set to Arizona time but ten minutes fast?

A.   I can't specifically state -- actually, I guess I can. It was set to Arizona time, and it was ten minutes faster than what the time was when I looked.

MR. BUTNER: Thank you.

THE COURT: Ms. Chapman?

FOLLOW-UP QUESTIONS

BY MS. CHAPMAN:

Q.   Detective Lindvay, I wasn't sure from the question whether they were asking -- the question was inquiring about Item 411 or the memory card that you also examined.

Could you determine whether or not the memory card that you examined, which you gave us a date and time with the limitation that you gave, can you tell if that was set to Arizona time?

A.   The memory card itself, no, I cannot determine what the date and time was on that. Without the camera itself and being able to compare the time on the camera to the regular time, there is no way for me to know.

MS. CHAPMAN: Thank you.

QUESTIONS BY THE JURY

THE COURT: Do you know what level of charge

the battery was at when the laptop was taken?

THE WITNESS: When the laptop was taken, there is no way for me to know what the level of charge was at that time.

Based off of my testing, my conclusion is it was pretty close to full, because when I did the test with the laptop charged up for a day-and-a-half so there is a hundred percent full battery, putting it to sleep with the full charge, the time period from when it went to sleep to the time it woke up was very similar to the amount of time it took between when the item was seized and when it turned on in the Yavapai County Sheriff's Office custody.

THE COURT: Follow-up?

MR. BUTNER: Follow-up.

FOLLOW-UP QUESTIONS

BY MR. BUTNER:

Q.   You say "very similar," your experiments, and you did how many?

A.   I did three total.

Q.   Three total of replication, as you called it; right?

A.   Yes.

Q.   It took -- the last one when you had it fully charged and recorded, it took approximately five days for it to get to that point where it turned itself back on, the

bells and whistles and lights went off and then it died;

right?

A.   Yes.

Q.   And the time of seizure, to your understanding, by

the Yavapai County Sheriff's Office was on July 3rd of the

year 2008?

A.   Yes.

Q.   And the time that the files were changed to -- the

date that the files were changed to was July the 8th of 2008;

right?

A.   Yes.

Q.   Approximately five days later?

A.   Yes.

Q.   That is what caused you to reach the conclusion

that the laptop was at least close to fully charged at the

time of seizure?

A.   Yes.

            MR. BUTNER: Thank you.

            THE COURT: Ms. Chapman?

                    FOLLOW-UP QUESTIONS

BY MS. CHAPMAN:

Q.   Did that conclusion have any affect on your

determination or ability to determine whether the laptop was

plugged in at the time it was seized on July 3rd?

A.   I can't determine whether it was plugged in at the

time it was seized. I have no way to know that.

Q.   Referring back to your report, which is Exhibit 641, did Detective Page do some initial investigation into what happened with the computer at the time it was seized?

A.   My understanding is yes.

Q.   I think, also referring back to your report, do you know what his conclusion was based on that investigation about the state of the laptop at the time it was seized?

A.   From talking with Detective Page and reading some things that he had documented in reports, it was my understanding that he had talked to people who seized the laptop. They said they did not open the lid, so therefore, they would not have caused the boot up to happen. They put it in property and evidence. There was no record to show anyone was in property and evidence, the Yavapai County Sheriff's property and evidence, at the time that the laptop actually booted up.

Q.   Do you know whether his investigation also revealed that at the time they received the laptop it was in the bag with the lid closed?

A.   I believe that is what was stated to Detective Page and what he had documented.

MS. CHAPMAN: Thank you.

THE COURT: Mr. Butner, anything else based on that?

MR. BUTNER: I do not, Judge. Thank you.

QUESTIONS BY THE JURY

THE COURT: Do you know if all the pictures on the memory card were taken by the same camera?

THE WITNESS: I did not check every picture on the camera. The three that were recovered, which were items that were shown here in court today, I can tell you, yes, they were taken with the same camera. At least they all contained the same meta data and showed a camera make of Sony, and a camera model of DSC-W100. I don't have the serial number to verify it was the exact same camera, but it was the same make, same model.

THE COURT: Part 2 to that question, if yes, how could you tell?

THE WITNESS: As I just explained, the camera make, camera model were the same for all three pictures that were recovered and that were shown in court today.

THE COURT: Follow-up?

FOLLOW-UP QUESTIONS

BY MR. BUTNER:

Q.   If I understood what you just said, you can tell the camera make and model from the meta data?

A.   Yes. That's the exif data I talked about before.

Q.   The what?

A.   The exif data, which is the camera make, camera

model, camera settings that were on the camera at the time. Those were -- that is information that the camera stores inside of the picture file.

Q.   All of that information was stored in those picture files that you recovered?

A.   Yes.

MR. BUTNER: Thank you.

THE COURT: Ms. Chapman?

MS. CHAPMAN: No follow-up.

QUESTIONS BY THE JURY

THE COURT: Were the 10:58, 3:40 system file changes from the first test also 10:58, 3:40 system file changes on the next test, or did those numbers change? And if they changed, why?

I will be glad to repeat the questions, if you need them.

THE WITNESS: Sure. The answer is no, they weren't the same every time.

I can tell you that -- and I have a spread sheet that shows it. The first test that I did, there were four additional files with created time stamps that changed. There were 20 less files that had modified time stamps that changed. And 154 less files that had access time stamps changed.

The second test was similar but the

1 numbers were a little closer to what I found on Item 411.

2 The last test, which is the one where the

3 time from going into standby and starting up were very

4 similar, the count was very close. There was three more

5 files that had created time stamps changed. There were two

6 more files that had modified time stamps changed. And there

7 were six more that had access time stamps changed. Those

8 were very close.

9 Why they were different? I have no way

10 of knowing exactly what was up on the screen or what was

11 running at the time the laptop was seized. And depending on

12 what was running versus what I had running at the time I did

13 my test could make those differences.

14 THE COURT: Follow-up, Mr. Butner?

15 FOLLOW-UP QUESTIONS

16 BY MR. BUTNER:

17 Q. Just to clarify, if I understood what you said,

18 that is really a big question, from the first test -- not the

19 first test, on the review of the clone of Item 411, you found

20 10 created times changed, 58 modified times changed, and 340

21 access times changed; right?

22 A. Correct, yes.

23 Q. And then on the last test where the computer was

24 powered up completely; right?

25 A. Yes.

1   Q.   And then you recorded the whole test, you found,

2   if I understood your numbers, 13 created files changed?

3   A.   Yes.

4   Q.   60 modified files changed?

5   A.   Yes.

6   Q.   Modified times changed, sorry.

7   A.   Yes.

8   Q.   And 346 access times changed?

9   A.   Yes.

10   Q.   And your hypothesis, if you will, for that was

11   what again?

12   A.   That I did not know exactly what applications were

13   running when the computer was seized. Depending on what

14   programs were running, what state they were in, could have

15   led to a few more or a few less files being changed.

16   Q.   So, if I understand what you are saying then, it

17   was depending on what was going on with the computer, what

18   kinds of programs were running at the time, you think, is

19   what accounted for that minor deviation?

20   A.   Correct. I tried to make the test cases as close

21   to being the same as I could, but there are just some

22   variables that I don't have control over, information that I

23   didn't know.

24   MR. BUTNER: Thank you.

25   THE COURT: Miss Chapman?

1   MS. CHAPMAN: Thank you.

2   FOLLOW-UP QUESTIONS

3   BY MS. CHAPMAN:

4   Q.   With respect to all of the tests that you did,

5   anytime a time stamp was changed on a file was it always a

6   system or application file?

7   A.   Yes.

8   Q.   In any of the tests was there ever a time when a

9   time stamp was changed on a user file?

10   A.   No.

11   MS. CHAPMAN: Thank you.

12   No further questions.

13   THE COURT: Thank you.

14   Counsel, may Detective Lindvay be excused

15   as a witness or would he be subject to recall?

16   MR. BUTNER: Judge, I ask he be subject to

17   recall.

18   THE COURT: Then, Detective Lindvay, you will

19   be excused for today anyway. It is possible you could be

20   called back as a witness later. Remember that the rule of

21   exclusion of witnesses applies, and you indicated you fully

22   understand what that means; correct?

23   THE WITNESS: Yes.

24   THE COURT: You will be excused at this time,

25   at least temporarily. Please watch your step as you step

1 down.

2   THE WITNESS: Thank you.

3   THE COURT: Mr. Butner.

4   MR. BUTNER: Yes, Judge. I would like to call

5 Detective Roger Hoover to the stand.

6   Judge, might this be a good time to take

7 the morning recess, so I could get my exhibits in order?

8   THE COURT: We could do that.

9   MR. BUTNER: I don't have a lot, but I just

10 need to get a couple of things.

11   THE COURT: Of course, we do need to take a

12 morning recess, but this is a bit early, given the start

13 time. We will do that. That makes sense.

14   And, ladies and gentlemen, please be

15 ready to resume in 15 minutes, that is a quarter till.

16 Remember the admonition.

17   We are in recess. Thank you.

18   (Whereupon, the jury exits the courtroom.)

19   (Brief recess.)

20   (Whereupon, the jury enters the courtroom.)

21   THE COURT: The record will show the presence

22 of the defendant, the attorneys and the jury.

23   Mr. Butner.

24   MR. BUTNER: Thanks, Judge.

25   I call Roger Hoover to the stand.

1   THE COURT: Please stand where the bailiff is

2   directing you. Raise your right hand and be sworn by the

3   clerk.

4   THE CLERK: You do solemnly swear or affirm

5   under the penalty of perjury that the testimony you are about

6   to give will be the truth, the whole truth, and nothing but

7   the truth, so help you God?

8   THE WITNESS: Yes, I do.

9   THE COURT: Please be seated here at the

10   witness stand.

11   Sir, would you please begin by stating

12   and spelling your full name.

13   THE WITNESS: Yes. My name is Roger Hoover.

14   R-O-G-E-R, H-O-O-V-E-R.

15   THE COURT: Thank you.

16   Mr. Butner.

17   MR. BUTNER: Thank you.

18   ROGER HOOVER,

19   called as a witness, having been duly sworn, testified as

20   follows:

21   DIRECT EXAMINATION

22   BY MR. BUTNER:

23   Q.   Roger, when you and I talked back and forth, you

24   don't need to get quite that close to the microphone. You

25   are really loud and clear.

1   A.   Thank you. With my voice today, I had a

2   precaution.

3   Q.   You are doing pretty well.

4   What is your present occupation, sir?

5   A.   I'm a detective with the Arizona Department of

6   Public Safety. I work in the computer forensic unit as a

7   computer examiner.

8   Q.   And the computer forensic unit, is that located or

9   part of ACTIC?

10   A.   Yes.

11   Q.   What is ACTIC?

12   A.   ACTIC is the Arizona Counter Terrorism Information

13   Center.

14   Q.   And that is located in Phoenix, Arizona; is that

15   correct?

16   A.   Yes. North central Phoenix.

17   Q.   And how long have you been with the Arizona

18   Department of Public Safety?

19   A.   I have been employed by the D.P.S. since July of

20   1985. 25 years.

21   Q.   25 years?

22   A.   Correct.

23   Q.   Would you describe for us your educational

24   background before you became employed by D.P.S.

25   A.   Been through high school. Graduated from Paradise

1   Valley High in Phoenix. Graduated from Arizona State

2   University with a biology degree. So I have a four-year

3   degree, Bachelor of Science.

4   Q.   And then after graduating from ASU with your

5   degree, did you receive any technical education after that?

6   A.   After getting out of the military, I did take some

7   courses in engineering, which involves a little bit of

8   computer programming and mathematics. So I had some

9   additional courses, yes.

10   Q.   Where did you take those courses in engineering

11 and mathematics?

12   A.   At the University of Arizona.

13   Q.   So you went to both ASU and U of A?

14   A.   As strange as it sounds, yes.

15   Q.   Are you conflicted on game day?

16   A.   I am a Sun Devil.

17   Q.   Did you receive technical education while you were

18 in the military?

19   A.   Yes, but not in this field. I was a Naval flight

20 officer. I was an aviator.

21   Q.   Naval aviator?

22   A.   Yes.

23   Q.   What type of aviator were you?

24   A.   I flew the rear seat, radar intercept officer to

25 the F-4 Phantom.

Q.   Where did you do that?

A.   I was stationed in Buford, South Carolina.

Q.   From what time to what time were you in the Navy flying back seat on F-4's?

A.   Actually, it was the Marine Corps. They have Naval flight officers. From 1978 to 1982.

Q.   Good for you.

So you joined D.P.S. in July of 1985; is that correct, sir?

A.   That is correct.

Q.   And then what type of training did you receive once you became part of D.P.S.?

A.   Like most all D.P.S. officers, we start as a highway patrolman. So we basically go through their academy. We learn traffic laws and criminal law. I was assigned to patrol in Yuma, Arizona, and received the basic radar training, intoxilyzer training, the typical type of training that a normal highway patrolman receives.

Q.   So you were a road officer for a period of time?

A.   Until approximately 1989.

Q.   Then in 1989, what did you do?

A.   I became a detective with the Department of Arizona, Arizona Department of Public Safety.

Q.   Did you receive any special training to perform your duties as a detective?

1   A.   Yes. Been through normal, many, many schools. I

2 was assigned to a customs task force and went through a lot

3 of their money laundering and that type of training, customs

4 training.

5   Q.   Did you work down around the Yuma area doing that?

6   A.   No. I was transferred to Phoenix as a detective.

7   Q.   Okay. And how long did you work in that aspect of

8 D.P.S. as a detective?

9   A.   Approximately maybe a year, year-and-a-half.

10   Q.   And then where did you go?

11   A.   Well, I was recalled to Desert Storm 1, and at the

12 same time I was in the Navy, this time in the Navy as a

13 reservist.

14   Q.   So you were recalled into the military for Desert

15 Storm 1?

16   A.   Correct.

17   Q.   How long were you in that?

18   A.   Six months.

19   Q.   And then you came back to D.P.S.?

20   A.   I came back to D.P.S., yes.

21   Q.   What did you do at that time?

22   A.   I was assigned to an administrative position with

23 the criminal investigations division for a couple of years.

24   Q.   So you were in admin for two years?

25   A.   Yes.

1   Q.   And then after that?

2   A.   For a brief period of time I was assigned to a

3 liquor squad for liquor enforcement.

4   Q.   Liquor enforcement, that kind of thing?

5   A.   Yes.

6   Q.   How long did you do that?

7   A.   Until about 1996.

8   Q.   And then what happened in 1996?

9   A.   In '96, I was assigned as a task force member of

10 the DEA on their prescription fraud enforcement squad. It

11 was the TDS, Tactical Diversion Squad.

12   Q.   How long did you do that task force with the DEA?

13   A.   Until 2000.

14   Q.   And in 2000?

15   A.   That is when I was assigned to the computer

16 forensics unit, where I am currently employed.

17   Q.   You have been doing that since the year 2000?

18   A.   That is correct.

19   Q.   Would you describe for us the specialized training

20 you have had to prepare yourself to perform your duties in

21 the computer forensics unit?

22   A.   I have been through IACIS.

23   Q.   Tell us what IACIS is, please.

24   A.   International Association of Computer

25 Investigative Specialists.

Q.   What kind of training have you had through IACIS?

A.   It is a two-week course, and it is basic to intermediary.

Q.   Okay.

A.   I have been through numerous courses with Guidance Software, which we use their software product called EnCase.

Q.   So you have had specialized training to use the EnCase program?

A.   Yes, which includes a lot of the theory behind it, which is common to all of the training.

Q.   How long was that training with Guidance Software for EnCase?

A.   I have been through numerous classes, intermediate and advanced, and they have specialized classes like Internet and e-mail, and I don't have a tally of the number of hours, but I know it is on my CV, which I have submitted to the court.

Q.   And what other training have you had?

A.   I have been through training with Access Data Corporation that makes FTK or Forensic Toolkit, another tool that we use for computer forensics.

Q.   And you are qualified on EnCase and Forensic Toolkit?

A.   That is correct.

Q.   And what other training have you had?

A.   Numerous conferences I have been to. HTCIA, which
is High Tech Investigators Criminal Association, where
basically we network with other computer examiners throughout
the world and exchange ideas and learn new techniques.

Q.   And are you a member of any special associations
in your field or profession?

A.   HTCIA.

Q.   Right, and what else? Any others?

A.   That's it.

Q.   That is basically it. Have you testified as an
expert witness before?

A.   I have testified in court as a computer forensic
examiner twice.

Q.   What courts have you testified in?

A.   Superior Court in Gila County and Superior Court
in Pinal County.

Q.   And you were qualified as an expert witness
computer examiner in those courts?

A.   I don't know exactly what terminology they used.

Q.   What did you testify about?

A.   I testified -- the one in Gila County had to do
with a computer. That was a homicide case that I examined
the computer and found some chats that were possibly
pertinent to the case.

The case in Pinal County had to do with a

cell phone. It was a homicide case, and it focused on

pictures that were on the cell phone that were possibly

pertinent to the case.

Q. In the Gila County case you recovered data from a

computer?

A. Gila County, yes, the computer.

Q. In the Pinal County case, you recovered data from

a cell phone?

A. That is correct.

Q. All right. And in connection with this particular

case, the homicide of Virginia Carol Kennedy, when did you

first become involved with this case?

A. A long time ago. It was in 2008. I show

approximately like July of 2008.

Q. And how was it that you became involved with this

case in July of 2008?

A. I was asked to assist with imaging of hard drives

on computers and examination of cell phones, and there were

initial requests and then follow-up requests.

MR. BUTNER: Let me show you what has been

marked as Exhibit No. 643.

May I approach, Judge?

THE COURT: Yes.

MR. BUTNER: Thank you.

Q. Do you recognize what is depicted in Exhibit 643?

1 A.   Yes, I do.

2 Q.   What is that, sir?

3 A.   This is a summary of times and dates when I picked

4 up evidence, returned evidence pertinent to the case, and

5 what I did with these pieces of evidence.

6 Q.   So it is basically a summary of each time you

7 picked up a piece of evidence in connection with this

8 particular case and what you did with that piece of evidence

9 and then when you returned it?

10 A.   That is correct, and many times there were

11 multiple pieces of evidence at the same time.

12 Q.   Is that a true and accurate summary of all of the

13 things that you did in this case? I don't mean a complete

14 summary. I mean an itemization of each of the things that

15 you did?

16 A.   Yes.

17   MR. BUTNER: I move for the admission of 643.

18   MS. CHAPMAN: Your Honor, may I see the

19 exhibit, please.

20   THE COURT: Yes, you may.

21   MS. CHAPMAN: Your Honor, with the agreed to

22 redaction to the part that he is not going to testify about,

23 I have no objection to the admission of this exhibit.

24   THE COURT: Mr. Butner?

25   MR. BUTNER: That is agreed upon, Judge.

1   THE COURT: Exhibit 643 will be admitted once

2   the redaction is made. It is admitted now, but it won't be

3   presented to the jury unless the redaction is made.

4   MR. BUTNER: Thank you.

5   Q.   I am going to have this here for you to refer to

6   if necessary, okay?

7   A.   Thank you.

8   Q.   Okay. Now, let's talk about your examination of

9   cell phones in this case, okay?

10   A.   Yes.

11   MR. BUTNER: I believe we have a stipulation

12   between the defense and the State, Your Honor, that the cell

13   phone with the assigned phone number of 928 713-1919 belongs

14   to the defendant, Steven DeMocker.

15   MS. CHAPMAN: That's correct.

16   THE COURT: Go ahead.

17   MR. BUTNER: I might as well say the other

18   ones, too, at this point. A stipulation that the cell phone

19   with the phone number 928 713-4187 belonged to the victim,

20   Virginia Carol Kennedy.

21   MS. CHAPMAN: That's correct.

22   MR. BUTNER: And then the cell phone with the

23   number, assigned number 928 848-9639 is the cell phone that

24   was found in the blue wet-dry bag adjacent to the Hassayampa

25   golf course.

1   MS. CHAPMAN: Correct.

2   THE COURT: The Court accepts that

3 stipulation.

4   MR. BUTNER: Thank you, Your Honor.

5   Q.   Okay. Let's start with the cell phone of 928

6 713-1919. Did you perform an examination of that particular

7 phone, I think it was called an LG VX 8700?

8   A.   Yes, I did.

9   Q.   And tell us what you did in connection with your

10 examination of that phone.

11   A.   I used two automated software extraction tools.

12 One is called Datapilot made by Susteen Corporation. The

13 other one is called Bitpim, which is a freeware off of the

14 Internet.

15   Q.   Would you spell that?

16   A.   B-I-T-P-I-M. It is commonly used in the forensic

17 field.

18   Q.   And you get it right off of the Internet?

19   A.   Yes. Bitpim.org.

20   Q.   It is a free program?

21   A.   Yes, it is.

22   Q.   Datapilot, is that a proprietary program?

23   A.   It is a proprietary program, yes.

24   Q.   In using those programs, were you seeking to

25 extract text message data?

1   A.   Yes.   I was seeking to extract all data available

2   for extraction from the phones.   That includes contacts,

3   pictures, call history and text messages.

4   Q.   And did you do that in regard to the phone 928

5   713-1919?

6   A.   Yes, I did.

7   Q.   When did you complete that extraction?   Do you

8   know?

9   A.   August 6, 2008.

10   Q.   When did you receive that phone to perform the

11   extraction?

12   A.   I am not sure at this time.

13   Q.   Sometime certainly before August the 6th of 2008;

14   right?

15   A.   I think so, yes.

16   Q.   Let me show you what has been marked as Exhibit

17   3351 for identification.

18   Do you recognize that particular

19   document?

20   A.   Yes, I do.

21   Q.   And what is that, sir?

22   A.   This is the cover report for my extraction of that

23   particular phone.

24   Q.   And is that a true, complete, accurate summary of

25   the extraction that you performed on that particular phone?

1   A.   Yes.   It basically says what I used, how I did it,

2   and when I did it, and the identification of the phone.

3   MR. BUTNER: I would move for the admission of

4   Exhibit 3351 at this time.

5   MS. CHAPMAN: No objection.

6   THE COURT: 3351 is admitted.

7   BY MR. BUTNER:

8   Q.   Now as part of that extraction process, did you

9   extract one text message from that particular telephone sent

10   on July 2nd of the year 2008?

11   A.   Can I get my glasses?

12   Q.   That would be a good idea.

13   A.   Thanks.

14   Q.   Did you extract a text message on July 2nd of the

15   year 2008?

16   A.   Yes, I did.

17   Q.   I shouldn't say "extracted on July 2nd."   It was a

18   text message that was sent on July 2nd of 2008 at 10:35 p.m.

19   Is that correct, sir?

20   A.   That is correct.

21   Q.   Let me show you what has been marked as Exhibit

22   3280.

23   Do you recognize this particular

24   document?

25   A.   Yes, I do.

1   Q.   Is that the text message that you extracted from

2   Mr. DeMocker's phone?

3   A.   Yes, it is.

4   Q.   And it was sent on what date?

5   A.   July the 2nd, 2008, at 10:35 p.m.

6   Q.   And to whose phone was that sent, or to what phone

7   number?

8   A.   It was sent to phone number 928 713-4187.

9   MR. BUTNER: Thank you. I move for the

10   admission of 3280 at this time.

11   MS. CHAPMAN: No objection.

12   THE COURT: 3280 is admitted.

13   BY MR. BUTNER:

14   Q.   And just to clarify, would you read what the

15   message was that was sent by Mr. DeMocker at that time.

16   A.   The text was: "Your brother just called me

17   worried. We you call us?" And it is "we you" call us.

18   Q.   Thank you, sir. I will get that from you in just

19   a moment.

20   Did you perform examination and

21   extraction information on Virginia Carol Kennedy's cell

22   phone, 928 713-4187?

23   A.   Yes, I did.

24   Q.   Did you prepare a report in connection with your

25   examination and extraction work on that phone?

1   A.   Yes, I did.

2   Q.   Let me show you what has been marked as Exhibit

3   3350.

4   Do you recognize that particular

5   document?

6   A.   Yes, I do.

7   Q.   What is it?

8   A.   That is the summary report. Much the same as the

9   previous summary report I had described for the Motorola

10 V-320 -- I have it labeled as V-326 report.

11   Q.   And does that accurately set forth the examination

12 and extraction that you performed on that particular cell

13 phone?

14   A.   Yes, it does.

15   MR. BUTNER: I would move for the admission of

16 Exhibit 3350 at this time.

17   MS. CHAPMAN: No objection.

18   THE COURT: 3350 is admitted.

19 BY MR. BUTNER:

20   Q.   And in connection with that particular cell phone,

21 did you extract e-mails -- not e-mails. Did you extract text

22 messages from that cell phone?

23   A.   Yes, I did.

24   The word "extracted," probably not. I

25 document via photography using a tool that we have to

facilitate the photography and make it quicker, but basically
it is a camera.

Q.   A better word would be just documented by
photography rather than extracted; is that correct?

A.   That is correct.

Q.   I am going to show you a series of photographs
that are marked for evidentiary purposes and ask you if you
recognize them.

Let's start with Exhibit 3313. Actually,
I think it is probably better to do several at once to speed
this up a little bit. 3313 and 3314. Would you take a look
at these two exhibits, please.

Do you recognize those particular
photographs?

A.   Yes, I do.

Q.   How is it that you are able to recognize those
photographs?

A.   These are text messages from this particular
phone. And I documented -- this is actually the photography
that I took.

Q.   Okay. They are text messages. And do they
reference the telephone number that the text messages were
sent to, or do they represent the telephone number that the
text messages were sent from?

A.   Actually, from the telephone number that it was

1 sent from.

2   Q.   Okay. So those are received text messages?

3   A.   Yes.

4   Q.   And they are received on Virginia Carol Kennedy's

5 phone?

6   A.   That is correct.

7   Q.   You called it the Motorola phone; is that right?

8   A.   Yes.

9   MR. BUTNER: I would move for the admission of

10 Exhibits 3314 and 3315 at this time.

11   MS. CHAPMAN: No objection.

12   THE COURT: 3314 and 15 are admitted.

13   MS. CHAPMAN: I think it is 13 and 14.

14   THE COURT: I thought Mr. Butner said 14 and

15 15. It should be 13 and 14.

16   MR. BUTNER: It should be 13 and 14, yes.

17 3313 and 3314.

18   THE COURT: Those exhibits are admitted.

19   MR. BUTNER: Thank you.

20   For the record I am placing 3313 on the

21 overhead projector at this time.

22   Q.   So, basically this is a text message that was sent

23 from Mr. DeMocker's telephone number, 713-1919 to Carol

24 Kennedy's phone; is that correct?

25   A.   That is correct.

1   Q.   And it recites: "I wonder if they withheld taxes

2 from your distribution. That would be interesting to work

3 around"?

4   A.   Yes.

5   Q.   The date down at the bottom indicates it was sent

6 on June 18 at 4:09 p.m.; correct?

7   A.   Correct.

8   MS. CHAPMAN: Objection, Your Honor. That

9 misstates the evidence.

10   MR. BUTNER: I should clarify.

11   THE COURT: I will sustain as a leading

12 question.

13 BY MR. BUTNER:

14   Q.   Does that indicate the date it was sent or the

15 date it was received?

16   A.   That would be the date that it was sent.

17   Q.   And did you look at the date and time on Virginia

18 Carol Kennedy's cell phone to see if it was accurate?

19   A.   I don't remember whether I did or not.

20   Q.   Did you check the date and time on Mr. DeMocker's

21 cell phone to see if it was accurate?

22   A.   I don't always check the date and time because

23 that would require connecting to the tower, and by connecting

24 to the service provider's tower you can get -- more messages

25 can come in if they were sent.

Q.   So you don't do that because you are afraid that you might change the evidence?

A.   Yes.

Q.   So you don't really know for sure if that is the date and time when that was sent?

A.   That is correct.

Q.   Or received?

A.   Yes.

Q.   Let me put on the overhead Exhibit No. 3314.

And that is also from Mr. DeMocker's phone, 713-1919.

A.   Correct.

Q.   And sent to Ms. Kennedy's phone; correct?

A.   That is correct.

Q.   Indicating the statement: "But I am sure you already know that the actual amount of the withdrawal was 197,367.36"?

A.   That is correct.

Q.   Let me show you what's been marked as Exhibit 3315, 3316, 3317, 3318, and 3319. Would you take a look at those photographs.

Do you recognize those -- that group of photos?

A.   Yes. This would have been text messages also photographed from the same telephone, 928 713-4187.

1   Q.   Virginia Carol Kennedy's cell telephone. Are

2   those accurate photographs of the messages that you saw on

3   the phone?

4   A.   Yes, they are.

5   MR. BUTNER: I would move for the admission of

6   Exhibits 3315, 3316, 3317, 3318 and 3319.

7   MS. CHAPMAN: No objection.

8   THE COURT: 3315 through 19 inclusive are

9   admitted.

10   MR. BUTNER: Okay. Now, for the record, I am

11   placing on the overhead Exhibit 3315 at this time.

12   Q.   And that's another message from Mr. DeMocker to

13   Carol Kennedy's -- from Mr. DeMocker's telephone to Carol

14   Kennedy's telephone; correct?

15   A.   Correct.

16   Q.   The message being: "Well, okay, when did you

17   receive the distribution? Withdrawal was executed May 28th";

18   right?

19   A.   Correct.

20   Q.   And the date at the bottom is what?

21   A.   Would have been Thursday, June 19 at 1:52 p.m.

22   Q.   How is your voice doing?

23   A.   It is hanging in there.

24   Q.   Okay. And then for the record I am placing on the

25   overhead Exhibit 3316 at this time.

1   And that is another text message from

2   Mr. DeMocker's phone to Carol Kennedy's phone about nine

3   minutes after the previous message; correct?

4   A.   Yes, that's correct.

5   Q.   Indicating: "Oh, well, it is still way above

6   expectations due mostly to my 17M in contributions"?

7   A.   Yes.

8   Q.   And then placing on the overhead Exhibit 3317.

9   This is another text message from

10 Mr. DeMocker's phone to Carol Kennedy's telephone; is that

11 correct?

12   A.   Yes, it is.

13   Q.   And it says: "Yep, that's one consequence of this

14 not getting done in February. Would have been over 200";

15 right?

16   A.   Yes.

17   Q.   That is about four minutes after the previous

18 message; right?

19   A.   Correct.

20   Q.   And then placing on the overhead Exhibit 3318.

21 This is another text message from Mr. DeMocker's phone to

22 Carol Kennedy's phone; correct?

23   A.   Yes, it is.

24   Q.   Two minutes after the previous one; right?

25   A.   Correct.

Q.   Saying: "The market is down a thousand points just since the day we settled"; right?

A.   Yes.

Q.   And then for the record placing on the overhead Exhibit No. 3319.

This is a message that was sent approximately three minutes after the previous message; right?

A.   Yes.

Q.   And from Mr. DeMocker's phone to Carol Kennedy's phone again; is that correct?

A.   That is correct.

Q.   Reciting: "Nope. It is getting worse, besides once you know you need the money it is never wise to thy that. We are paying too much interest to gamble"; right?

A.   Yes. That's correct.

Q.   Let me show you what has been marked as Exhibit 3320, which is three sheets.

Would you take a look at that particular exhibit.

A.   (Whereupon, the witness reviews a document.)

Q.   Do you recognize those photographs?

A.   Yes. Again, this would be from the same phone that I documented through photography.

Q.   So those are photographs of text messages that you

documented on Carol Kennedy's cell phone; correct?

A. Yes. That is correct.

MR. BUTNER: I would move for the admission at this time of Exhibit 3320.

MS. CHAPMAN: No objection.

THE COURT: 3320 is admitted.

MR. BUTNER: And for the record, placing on the overhead again Exhibit 3320.

Q. So this is another text message from Mr. DeMocker's phone to Carol Kennedy's phone?

A. Yes, it is.

Q. Okay. And it's on three separate screens; is that correct?

A. Yes. And you notice the scroll bar on the right, right here, that is at the bottom there. The first one would be at the top, and the middle one would be in the middle.

Q. Okay. All right. I see that one in the middle and that one is up at the top; right?

A. Yes.

Q. So this message says: "Well, okay then, I can probably borrow someone's truck this weekend, but we will need a little clearer agreement about the art. I am not going to simply send out everything and wait to see how many you take. If you can't do this in some way that isn't unnecessarily inconvenient for everyone, we can just let, I,

any idea what you are doing. You appear to be losing.

Unnecessarily inconvenient for everyone. We can just let, I,

any idea what you are doing. You appear to be losing money."

    A.   Actually, because I couldn't -- the last part of

the second one goes right to the money at the end.

    Q.   Okay. I will back up and go through this once

again.

    A.   Right.

    Q.   All right. Here we have: "Well, okay then, and I

am not going to simply send out" is the last part of this

particular text; right?

    A.   Yes.

    Q.   "Everything and wait to see how many you take. If

you can't do this in some way that isn't necessarily

inconvenient for everyone"; right, and then should we go to

the next?

    A.   Yes. We can pick up at "we can."

    Q.   "Unnecessarily inconvenient for everyone. We can

just let, I, any idea what you are doing. You appear to be

losing money"; right?

    A.   That is correct.

    Q.   That is basically the flow of that text?

    A.   Correct.

    Q.   The date and time June 19, 3:35 p.m.?

    A.   Correct.

Q.   Let me show you what has been marked as Exhibits 3321, 3322, 3323, 3324, and 3325.

Would you take a look at those, please.

A.   (Whereupon, the witness reviews a document.)

Yes.

Q.   Do you recognize those photographs, Detective Hoover?

A.   Yes. Again, these are additional text messages from Carol DeMocker's cell phone.

Q.   Okay. And those are text messages that you photographed and took off of her cell phone?

A.   Yes. I documented these through photography.

MR. BUTNER: I would move for the admission of Exhibits 33 -- I think I said 3321?

THE COURT: Through 25.

MR. BUTNER: Through 3325.

MS. CHAPMAN: No objection.

THE COURT: 3321 through 25, inconclusive, are admitted.

MR. BUTNER: I will put those on the overhead.

Q.   Okay. I am placing 3321 on the overhead.

This is another message from Mr. DeMocker's phone to Carol Kennedy's phone; right?

A.   Yes, it is.

Q.   "Where is the field of greens? The one at the

1   office? And there's the one with the red circle at my house

2   titled 'eternal.' Is 'eternity' a different one?"

3   Is that the way it reads?

4   A.   Yes.

5   Q.   The date at the bottom being June 19 at 4:28 p.m.

6   A.   That is correct.

7   Q.   And then 3322 is on the overhead at this time. It

8   reads: "Do you mean the orangish red print outside my office

9   called 'window' or the dark yellow untiled one down the

10   hall?" Correct?

11   A.   That is correct.

12   Q.   And that is at a time four minutes after the

13   previous one on June 19th; correct?

14   A.   Yes.

15   Q.   And then for the record I am placing 3323 on the

16   overhead. That is again from Mr. DeMocker's phone 713-1919;

17   correct?

18   A.   That is correct.

19   Q.   And it's two minutes after the previous one

20   saying: "That's my favorite."

21   A.   Correct, and also with a colon, and that is like a

22   sad face nomenclature in texting.

23   Q.   People that know how to text can do that kind of

24   thing sometimes?

25   A.   They know what it is. The other way would be a

happy face.

Q.   And then placing on the overhead Exhibit 3324.

This comes three minutes after the previous one, again from Mr. DeMocker's phone; right?

A.   Yes.

Q.   "I like the red window one very much, but I can let it go. 'Eternal' that one I love."

A.   That is correct.

Q.   And then one minute after that one from Mr. DeMocker's phone to Carol Kennedy: "What is the green one? Where?"

A.   That is correct.

Q.   Let me show what you has been marked as Exhibits 3326 and 3327.

Do you recognize those two photographs?

A.   (Whereupon, the witness reviews a document.)

Yes. Again, these are text messages that I documented through photography of Carol DeMocker's phone.

Q.   Carol Kennedy's phone?

A.   Carol Kennedy's phone.

Q.   The Motorola phone; is that right?

A.   Yes.

MR. BUTNER: I would move for the admission of 3326 and 3327.

MS. CHAPMAN: No objection.

THE COURT: 3326 and 27 are admitted.

MR. BUTNER: And placing on the overhead 3326.

Q.   It reads: "Are you thinking of my best interests or yours?"

A.   Yes.

Q.   And then 3327, from Mr. DeMocker's phone to Carol Kennedy's phone; right?

A.   That is correct.

Q.   "Well, thanks, but I'm okay."

A.   Yes.

Q.   And that's sent four minutes after the previous one; is that correct?

A.   Yes.

Q.   Let me show you what has been marked as Exhibits 3328 and 3329.

Do you recognize those documents -- or photographs, actually?

A.   Yes. Again, these are photographs that I took documenting the text messages that was received on Carol Kennedy's phone.

MR. BUTNER: I would move for the admission of 3328 and 3329.

MS. CHAPMAN: No objection.

THE COURT: 3328 and 29 are admitted.

MR. BUTNER: For the record, I am placing on

the overhead Exhibit 3328 at this time.

Q.   From Mr. DeMocker's phone, 713-1919, saying: "I will need to pick it up before 5:00.   She arrives at 6:00"; correct?

A.   Yes.

Q.   That is on -- the date at the bottom of June 24th at 12:33 p.m.; right?

A.   That is correct.

Q.   And then 3329, reads: "Home, too.   I felt terrible for Char.   Thanks for making that so enjoyable. Sleep well."

A.   Yes, that's correct.

Q.   And the date is June 28th at 11:52 p.m. on the bottom; is that correct?

A.   Yes.

Q.   Let me show you what has been marked as Exhibits 3330 and 3331.

Do you recognize what is depicted in those two exhibits, those photographs?

A.   (Whereupon, the witness reviews a document.)

Yes.   Again, these are additional text messages from Carol's Kennedy's phone that I documented through photography.

MR. BUTNER: I move for the admission of 3330 and 3331 at this time.

1   THE COURT: 3330 and 31 are admitted.

2   MR. BUTNER: And for the record I am placing

3   Exhibit 3330 on the overhead at this time.

4   From Mr. DeMocker's phone to Carol

5   Kennedy's phone.   It reads: "It is not that I don't want

6   coffee."

7   A.   Yes.

8   Q.   Is that correct?

9   A.   That is correct.

10   Q.   "It's that I was content with a sip of yours."

11   A.   That is correct.

12   Q.   Sent one minute after the previous message?

13   A.   Yes.

14   Q.   Then I am going to show you what has been marked

15   as Exhibit 3332.

16   Do you recognize that particular

17   photograph?

18   A.   (Whereupon, the witness reviews a document.)

19   Yes.   Again, this is an additional text

20   message that I documented from Carol Kennedy's phone via

21   photography.

22   MR. BUTNER: I would move for the admission of

23   Exhibit 3332.

24   MS. CHAPMAN: No objection.

25   THE COURT: 3332 is admitted.

1   MR. BUTNER: For the record I am placing that

2   on the overhead.

3   That is a message that says: "We

4   exchanged texts. She's great."

5   A.   Yes.

6   Q.   Let me show you, then, what is marked as Exhibit

7   3333, 3334, and 3335.

8   Would you take a look at these three

9   photographs, please.

10   A.   (Whereupon, the witness reviews a document.)

11   Q.   Do you recognize those, Detective Hoover?

12   A.   Yes. Again, these are text messages that I

13   documented via photography of Carol Kennedy's phone.

14   Q.   Additional ones sent from Mr. DeMocker's phone?

15   A.   Correct.

16   MR. BUTNER: I would move for the admission of

17   3333, 3334 and 3335.

18   MS. CHAPMAN: No objection.

19   THE COURT: 3333 through 35, inconclusive, are

20   admitted.

21   MR. BUTNER: And then for the record I am

22   placing on the overhead Exhibit 3333 at this time.

23   Q.   And it has a date of July 2nd at 7:59 a.m. at the

24   bottom; is that correct?

25   A.   Yes.

Q.   Coming from Mr. DeMocker's cell phone, 713-1919; right?

A.   Yes.

Q.   To Carol Kennedy's phone saying: "I need to pick up the X-3. When and how can I get the keys?"

A.   Yes. That's correct.

Q.   And then Exhibit No. 3334 at 1:42 p.m. on that same July 2nd date, "can you give me the courtesy of a response to my question about picking up the X-3 or my e-mail about exchanging checks"; correct?

A.   Yes, it is.

Q.   At 1:42 p.m. on July the 2nd?

A.   Yes.

Q.   And then at 2:33 p.m. on July the 2nd, Exhibit 3335. "It's about the fact that we owe each other -- that we each owe the other a pile of money today. Is there another e-mail address to which you would like a copy sent?"

A.   Yes. That's correct.

Q.   Okay. Now, in addition to analyzing Virginia Carol Kennedy's cell phone, 928 713-4187, and that is admitted; is that correct, the report on that Exhibit 3350?

         THE COURT: Would you check that? Yes.

         MR. BUTNER: Okay. Thank you.

Q.   Did you also analyze another cell phone in this case with the telephone No. 928 848-9639?

         A.   Yes, I did.

         Q.   That is the phone that we have talked about as
coming out of the blue wet-dry bag; correct?

         A.   That is correct.

         Q.   Let me show you what has been marked as Exhibit
3347.

         A.   (Whereupon, the witness reviews a document.)

         Q.   Do you recognize that particular exhibit, sir?

         A.   Yes. This is the cover report that I created
while I examined the phone that has that particular telephone
number.

         Q.   Okay. Is that a true and accurate summarization
of your examination of that particular cell phone?

         A.   Yes, it is.

               MR. BUTNER: I would move for the admission of
Exhibit 3347 at this time.

               MS. CHAPMAN: No objection.

               THE COURT: 3347 is admitted.

               MR. BUTNER: Okay.

         Q.   Now, this is described as a Samsung SCH dash U340
cell phone.

         A.   That is correct. That is the make and model.

         Q.   And is this a top-of-the-line type of cell phone?

         A.   No. It is a very basic cell phone.

         Q.   And is there anything significant about this kind

1   of basic cell phone in terms of what kind of cell phone

2   service you get?

3   A.   Yes.   From my analysis, it shows that it is a

4   prepay account cell phone, where you pay for it by the

5   minute.   You don't have a yearly subscription.   You pay as

6   you go.

7   Q.   So, it is a pay-as-you-go phone; is that correct?

8   A.   Yes.

9   Q.   And did you find anything of significance on this

10   particular cell phone?

11   A.   There was a text message that read -- that was

12   from a 928 number, and it was from 928 848-9639.   And it

13   was -- it reads: "VZW, hyphen, free, hyphen, MSG.   Your

14   account security code has been updated to 1386, period.   You

15   will need this to access my prepay account or when calling

16   customer service."   And it is dated Thursday, July the 3rd at

17   10:53 p.m.

18   Q.   So is that a message from the cell phone service

19   provider?

20   A.   It would indicate to me that it is a message from

21   the service provider telling him how to access his prepay

22   account.

23   Q.   I see.   And then, so it tells you how to call them

24   up and pay for it?

25   A.   Yes.

1   Q.   And then that was dated Thursday, July 3rd at

2   10:53 p.m.?

3   A.   Yes.

4   Q.   And then was there another type of message or some

5   type of banner on the screen of the cell phone?

6   A.   Yes.   On the cell phone's default wallpaper, when

7   you turn the phone on it has -- it comes up with a picture,

8   if you choose, or whatever Verizon puts on there first, and

9   you are able to actually put your own banner on there.   And

10   the banner that was composed by the user of the phone was:

11   "I love you" and the letter "D."

12   Q.   I am going to put that on the overhead because

13   there is a date on there.

14   Can you explain how the date of Monday,

15   April 19th at 12:40 p.m. got on there?

16   A.   Yes, I can.

17   MR. BUTNER: For the record I am placing

18   Exhibit No. 3347 on the overhead at this time.

19   Q.   What I am going to do, first of all, is just zoom

20   it in to show -- this is part of the message that you were

21   talking about from the service provider; is that correct?

22   A.   Yes, it is.

23   Q.   Where it indicates you need to access the prepaid

24   account by calling that customer service number?

25   A.   Yes.

1   Q.   Right below it on your report you have this --

2   actually, it is a Xerox copy of your photograph; right?

3   A.   That is correct.

4   Q.   You call this some sort of a banner; right?

5   A.   Yes. The picture itself with the clouds is the

6   wallpaper, which looks like the generic wallpaper that is

7   provided by the service provider by the phone. A lot of

8   times you can put your own favorite picture there as to your

9   wallpaper.

10   Then in the menu you can actually compose

11 a banner, and this banner was composed by the user of the

12 phone.

13   Q.   And then there is a date down here. Actually, you

14 don't know who composed this banner, do you, this message?

15   A.   It would be the user of the phone, whoever had

16 access.

17   Q.   Who had access and used the phone?

18   A.   Yes.

19   Q.   And then here's the date of Monday, April 19 at

20 12:40 p.m.

21   A.   Yes.

22   Q.   Do you know where that date comes from?

23   A.   Yes, I do.

24   Q.   Where does it come from?

25   A.   That date was the date and time that I actually

1   took the photograph. And if you notice up here, the phone

2   was connected, because that antenna right here, the phone was

3   connected to the service provider, so therefore, it was

4   getting the date from Verizon, the date and time was updated,

5   and that is the date and time I took the photograph of the

6   screen shot.

7   Q.   So you had to turn the phone on in order to get

8   the screen shot like that; is that correct?

9   A.   Yes. In most cases, best protocol for processing

10   phones is to turn on the phone under a Faraday protection, so

11   that it blocks the signals from the service provider's tower.

12   Is that too loud?

13   Q.   No I think that is okay.

14   A.   So, it doesn't receive calls and messages, that it

15   remains static in the condition that it was in. This

16   particular phone did not have an airplane mode. What I

17   normally do is I block it with this mesh which blocks the

18   signals, and I can see through the mesh, but it is not good

19   for photography. I can see through the mesh and put it into

20   airplane mode, which disconnects it electronically from the

21   service provider tower, and then I take the mesh off.

22   Q.   The airplane mode is when you are flying on an

23   airplane it did not interfere with the instruments and so

24   forth on the airplane; right?

25   A.   Correct. It is not emitting any RF signals and

receive signals, and that is why they call it airplane mode.

Sometimes it is called stand alone mode, and there is other

terminologies for it, but this phone didn't have it. So when

I needed to photograph the phone, it was in the clear and it

was connected to the Verizon tower.

Q.   So you got the date and time of when you were

taking the photograph on the phone?

A.   That is correct.

Q.   This is such a cheapy, little bare bones phone

that it doesn't even have airplane mode?

A.   That is correct.

Q.   Detective Hoover, I am going to show you what has

been marked -- it hasn't been marked. It will be marked,

please.

Let me show you what has been marked as

Exhibit for Identification 3352. Here, Detective, you do

these evidence kind of things.

MR. BUTNER: Judge, can we borrow your

scissors again?

THE COURT: Surely.

THE WITNESS: Thank you.

MR. BUTNER: For the record, you are opening

up what has been marked as Exhibit 3352.

Q.   And do you recognize the item that is in that

envelope marked 3352?

A.   It appears to be the same cell phone that I

examined that I just talked about. It is Samsung SEH U340,

and the MEID, which is the Mobile Equipment Identifier, very

much like a VIN number on your car, unique to this particular

device, matches the MEID on my report.

Q.   It is 771634?

A.   Yes. That is the last six.

Q.   That is like the VIN number or serial number on

the car; right?

A.   That is correct. It is a unique number.

Q.   It is the same phone that you examined that came

out the blue wet and dry bag?

A.   Yes, it is.

MR. BUTNER: I move for the admission for

demonstrative purposes at this time, Judge, of Exhibit 3352.

MS. CHAPMAN: No objection, Your Honor.

THE COURT: 3352 is admitted for demonstrative

purposes.

MR. BUTNER: I don't have any further

questions of this witness at this time, Your Honor.

THE COURT: Thank you, Mr. Butner.

Ladies and gentlemen, it is noon. We

will take the noon recess. Please remember the admonition.

Detective Hoover, the Rule of Exclusion

of Witnesses has been invoked in this case. You understand

1   what that means?

2   THE WITNESS: Yes, I do.

3   THE COURT: That needs to be followed.

4   Ladies and gentlemen, I am going to ask

5   that you return and be ready to proceed at 1:30. So you are

6   excused at this time, as are you, Detective, and I am going

7   to ask that the parties remain just for a moment. I want to

8   talk about some scheduling matters.

9   Thank you.

10   (Whereupon, the jury exits the courtroom.)

11   (Whereupon, this portion of these proceedings was concluded.)

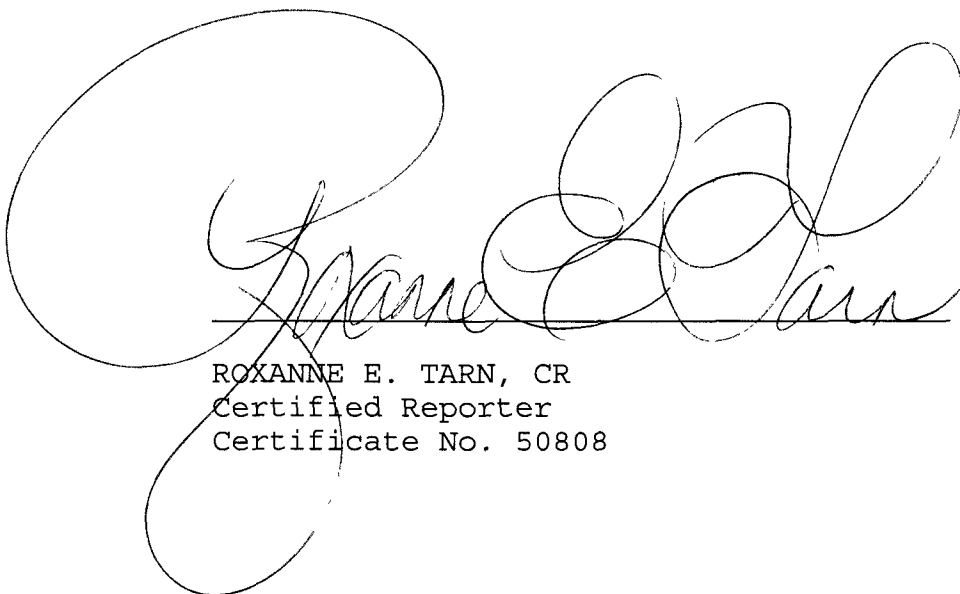12   ***o0o***

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7   C E R T I F I C A T E

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9   I, ROXANNE E. TARN, CR, a Certified Reporter

10   in the State of Arizona, do hereby certify that the foregoing

11   pages 1 - 95 constitute a full, true, and accurate transcript

12   of the proceedings had in the foregoing matter, all done to

13   the best of my skill and ability.

14   SIGNED and dated this 26th day of October,

15   2011.

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17

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21   _____

22   ROXANNE E. TARN, CR
     Certified Reporter
23   Certificate No. 50808

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